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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

In The Matter of The Estate of
WILLIAM KUNTZ

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE
SECOND DISTRICT MONTGOMERY COUNTY, OHIO

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Questions Presented

Whether federal courts May Entertain suits where a National Banking Institution has exercised powers enacted by Congress under provisions of the Federal Reserve Bank Act approved December 23, 1913 being Section 11(k) as affirmed as within the power of Congress within Article 1, 8, clause 18 in *First National Bank vs. Union Trust Co.*, 244 U.S. 416?

Whether the confusion and conflict in the application of Sections 6166 and 6166A of the Regulations Of The Commissioner of Internal Revenue and the Operation Of State Law of Inheritance create an Article III Case and Controversy wherein Mandamus does not lie under the decision of the United States Tax Court in *Lane v. United States*, 822 U.S.T.C. 13,473 (D. Mass. 1982)?

That plain error in the decision of a State Court matter based upon state law is reviewable by the Supreme Court of the United States if the United States could have been a party or has a substantial interest in the outcome?

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IN THE

Supreme Court of the United States

October Term, 1983

IN THE MATTER OF THE ESTATE OF WILLIAM KUNTZ

PETITITON FOR A WRIT OF CERTORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT MONTGOMERY COUNTY, OHIO

William Kuntz, III, Displaced executor of the estate of William Kuntz, appearing *pro se*, petitions for a *writ of certiorari* to review the Judgment of the Court of Appeals for the Second District of Montgomery County, Ohio.

OPINIONS BELOW

The Opinion of the Court of Appeals was rendered on the 19th day of May, 1983 in Case Number 7355, reviewing the Findings and Conclusion of the Probate Court of Montgomery County, Ohio Case 231191 Docket 290.

JURISDICTIONS

The Final Judgment of The Court of Appeals was entered on May 31, 1983. A Notice of Appeal to the Supreme Court of Ohio was filed July 26, 1983 to have The Court of Appeals certify it's Record to the Supreme Court. In Supreme Court Case No 83-1153.

This was overruled on September 21, 1983. Petitioner asserts that jurisdiction is available in the Supreme Court turning on among others the Federal Reserve Act passed into law on December 23, 1913 as affirmed by this court in the case of *First*

National Bank of Bay City v. Fellows, Attorney General Of The State Of Michigan, on the relation of the Union Trust Company, *et. al* being Case Number 764 of the October Term of 1916 argued March 22, 23 1917—Decided June 11, 1917 244 U.S. 416.

CONSTITUTIONAL PROVISIONS, STATUES AND REGULATIONS INVOLVED

The Federal Reserve Act of December 23, 1913, generally Section 11(k). Sections 6166 *et seq* of the Internal Revenue Code with regards to the payment of Federal Estate Tax obligations as recently amended by the Tax Reform Act of 1976 effecting qualifications for closely held business interested as reamended under Code Section 267 (c) (4).

Matters raised under the Lane Case being 5 U.S.C. §702; 28 U.S.C. §1331, 1361; 26 U.S.C. §7421(a).

Article I, §8, Clause 18 of the Constitution as recognized in the First National Bank of Bay City Opinion by Chief Justice White with Mr. Justice Van Devanter dissenting citing the Act of June 3, 1864 as stated on pgs. 430 and 431 of 244 U.S. 416 with Mr. Justice Day concurring in the dissent & Ohio R.C. 2109.44.

STATEMENT

Since the Passage of the Federal Reserve Act of 1913 as affirmed in the 1917 case *First National Bank of Bay City v. Fellows-National Banking Institutions* have been granted the power to engage in appropriate functions to compete with Rival State Corporations. Additionally, Section 11(k) provided for permits to be granted to National Banking Institutions to act as Trustee, Executor, Administrator, . . . in First National Bank drawing upon the very elder propositions of *McCulloch v. Maryland Andosborn v. Bank* that there is a natural connection between the business of banking and the carrying on of Federal

Fiscal Operations. There is none . Apparently, between such operations and the business of settling estates . . . (244 U.S. 423). Further . . . this being so, there is in the legislation a direct invasion of the sovereignty of the state which controls not only the devolution of estates of deceased persons and the conducting of private business within the state, but as well the creations of corporations and the qualifications and duties of such as may engage in the business of acting as trustees, executors and administrators. Such an invasion the court may declare and may prevent by its order operating upon the offending agency. . . .(244 U.S. 423). Thus, the power to operate in the state probate court was confirmed as a matter of Federal Constitutionality when petitioner's grandfather was yet in his early years. Petitioner therefore contends that because of the prior decisions of this court and the interests of the United States in the subsequent enactment and collection of Federal Estate tax by Congress provide an ample basis for the court to exercise its jurisdiction in granting a *Writ of Certiorari* to the Court Of Appeals For Montgomery County, Ohio.

THE PROCEEDINGS IN THE CASE

William Kuntz, Sr. died on March 5, 1983. A resident of Montgomery County, Ohio. At the time of his death he was the Chairman of North Central Mortgage Corporation. A packager of VA and FHA Loan and Commercial mortgage maker, a Director of the Peter Kuntz Lumber Company and a Director of Scioto Savings And Loan, A state chartered Savings Institution, a shareholder in all the foregoing and other affiliated lumber companies located in several midwestern states.

On March 11, 1980, William Kuntz, III, grandson of the deceased and Petitioner and Paul W. Heintz, an Officer and Director of the Peter Kuntz Lumber Company were appointed Co-Executors under the Will of the Deceased, admitted into probate. On September 11, 1980, several months after the commencement of the Administration of the Estate of the Deceased, William Kuntz, Sr. Winters National Bank and Trust

Company now, Bank-One Ohio's Largest Bank, made an application supported by several members of the Local Probate Bar representing the respective parties to remove Petitioner for among others failing to sell certain minority shares in the Estate of the Deceased and to dispose of the residence of the Deceased. Such application was clearly calculated to be heard on December 4, 1980 one day prior to the due date for the filing of a Federal Estate Tax Return in the Estate of the Deceased, William Kuntz, Sr.

Among other allegations made by the attorneys of the National Bank where the Petitioner had failed to sell certain securities including securities in Rival Financial Institutions being interests in North Central Financial Corporation and Scioto Savings and Loan, a State Chartered Institution, to the Peter Kuntz Company. In the proceedings held before Probate Judge Zimmers, among other facts established; it became apparent that Applicant, Winters National Bank And Trust Company, had made it filing over two weeks before any written offer was ever made to Petitioner by the Peter Kuntz Company of which Petitioners Co-Executor was an Officer and Director.

Further, it was established that several weeks after the Commencement of the Administration of the Estate a sensational crime widely reported in the local press occured at the residence of a doctor adjacent to the residence of the Deceased in Dayton, Ohio. It was further established in the hearing that Petitioner was of the opinion that this publicity had adversly effected the marketability of the Residential Real Estate in the Estate of the Deceased. Without further elaboration at this point Petitioner proposes that the Applicant, Winters National Bank And Trust Company, apparently engaged in collusion as it would be otherwise impossible to establish how Petitioner would be expected to have failed to accept an offer he had not yet even received.

The necessity of having documents reduced to writing has long been established as a matter of legal significance.

"The English Statue of Frauds, which was enacted in 1676 and which became effective in 1677," provides in part that "all

declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing."

In the present case Petitioners trustee, Winters National Bank And Trust Company, was complaining of Petitioners failure to act where to an observing eye there could not have been an operative offer made prior to the action to turn the administration of the estate to the banks own ends in seeking Petitioners removal.

Further, the record is devoid of any manifestation that Petitioner had been provided with any factual financial data where he might make an informed Judgment that the law would require a fudicary. Further, "the existence of collusion implies the existence of fraud," McKenna: *Wheeler v. Denver*, 229 U.S. 342, 350.

"Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibition" Frankfurter, *Sec. v. Chenery*, 318 U.S. 80, 92.

Petitioners trustee being of considerable financial stature has

> "the advantage of prolonged litigation lies with the party able to bear heavy expenses." Brandeis: *Crowell v. Benson*, 285 U.S. 22, 94

In the proceedings before Judge Zimmers it was Petitioners contention that the tax payable to the Federal Government was open to a review of making several favorable elections as established by Congress. This is well established.

> "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted," Sutherland: *Gregory v. Helvering*, 293 U.S. 465, 469"

As Petitioner has now been removed by the assembled members of the Local Probate Bar he cannot seek an independent Federal review of the tax matter as espoused in the case of *Lane*

v. United States, 822 U.S.T.C. 13, 473 Where the District Court did not have any jurisdiction to enjoin the Secretary of the Treasury from addressing the closely held business Estate Tax Treatment that this Petitioner contends is available in this Estate matter. As established in the direct testimony in the hearing before the probate court that Petitioner had made the proper protective election to preserve the possible tax savings notwithstanding the efforts of the bank. It was also clear that no other beneficiary made any appearance or was represented by counsel. Petitioner is of the belief that the trustee now Administrator, Winters National Bank and Trust Company, does or cares little for any favorable tax treatment for the Estate of the Deceased, William Kuntz, Sr. Those driving motives behind the effort of the Winters National Bank And Trust Company are more fully addressed in Appendix (XX) and reflect the basis for the subterfuge engaged in by the "trustee".

With regards to the Residential Property the record does not speak to the private motive of the Petitioner in seeking an rearrangement of the affairs of the Estate. Petitioner as a beneficiary at any time on his request required the residence to be held for his individual benefit.

> "Where the trust property is real property and the interest if the beneficiary is an interest in fee, has interest descends as real property". . .
> Scotts Abridgement of the Law of Trusts 264 13.1

Wherein the interest of petitioner'saunt was somewhat different

> "Where, however, although the trust property is real estate, yet the interest of the beneficiary is limited to a term of years, his interest is personal property."
> Scotts ibid

If Petitioner had wished the residential property for his own, why would he construct such a complex transaction when in fact he had the right as a beneficiary to obtain the property on request. Petitioner contends that his proposed transaction was a sound response in light of the impairment to the property caused by the sensation that occured next door.

"Few formulas are so absolute as not to bend before the blast of extraordinary circumstances"
Cardozo: *Evangelical Luth. Church v. Sablem*, 254 N.Y. 161.167

Having established that the proposed transaction was not dissimilar to one that was conducted between the interests of Petitioners grandmother who died five years prior to these events, Winters National Bank and Trust Company, Petitioners Aunt and this same company it is inconsistent that the National Bank now object to what it had condoned, even directed in the prior transaction that was the basis for this proposal to fund the estate with the funds that were available in the trust account from the proceeds of life insurance policies that were paid upon the death of William Kuntz, Sr.

In compliance with the section of Ohio Law Appendix (A-1) and the language of the trust document appendix (A-2) Petitioner only sought what the law provides.

GRANTING

Petitioner contends that it is vital to the integrity of the administration of the estate that review be granted at this stage in the proceeding.

Once the present administrator Winters National Bank & Trust Company has paid over the taxes and added its numerous charges the estate will be considerably depleted. Petitioner's remedies will almost certainly be reduced to a suit for damages against the trustee-administrator Winters National Bank & Trust Company. He will be denied the benefit that was the intent of the bestower in seeking to balance the interest of the beneficiary with that of Mr. Heintz and The Peter Kuntz Company of which this estate is the largest single shareholder. Thus, a multiplicity of litigation will ensue such that the concept of Judicial economy will be ignored and that the Trustees, Winters National Bank & Trust Company, created by Congress, will be able to prevail by economic coercion.

It should be noted that the bank is neither an heir nor an other interested party except by designation of the testator.

> "The taking of possession of inherited property is one of the most ancient subjects of taxation known to the law."
>
> Stone: *Fernandez v. Weiner*, 326 U.S. 340, 353

Thus, when it was established that Congress could invade State Law and Sovereignty as affirmed in *First National Bank of Bay City*, a logical proposition would follow and as such an Article III controversy rightly exists. As the fundamental purpose of litigation is to resolve disputes, or as in this case there are mixed State and Federal interplay'sthat comprise current estate administration it would be patently unfair to allow a National Banking Institution to arrive at a result contrary to the intent of Congress without the check of Independent Federal review when the United States has a substantial interest.

> "The end of litigation is justice. Knowledge of the truth is essential thereto."
> Brewer: *Union Pacific Railway v. Botsford*, 141 U.S. 250, 258

When the tax laws of this Country prohibit underpayment, it should not condone overpayment when such is contrary to the legislation of Congress in these tax matters. No surcharge or other levy was sought against petitioner. Merely his removal for failing to sell to other family members shares of stock.

> "Historical ties and associations combined with strategic holdings of stock, can on occasion serve as a potent substitute for obvious modes of control.
> Murphy: *North American Co. v. SEC*, 327 U.S. 686, 693

> "The whole problem of the relation between parent and subsidiary corporation is one that is still enveloped in the mists of metaphor"
> Cardozo: *Berkey v. Third Ave. Co.*, 244 N.Y. 84, 94

As such:

> "The idea that the capital of a corporation is a football to be thrown into the market for the purposes of speculation, that its value may be elevated or depressed to advance the interests of its managers, is a modern and wicked invention"
> Hunt: *Upton v. Tribilock I. Otto*, (91 U.S.) 45, 48

Such as stated in petitioners appendum there lies the basis for granting Petitioners a Writ with regards to the conduct of Winters National Bank & Trust Company.

> "Men do not usually employ so much labor for nothing. If they use mystery without an object, they must expect to excite suspicion. To do away with that suspicion they ought to show an object."
> Marshall: *Locke v. United States*, 7 Cranch (11 U.S. 339, 347)

> "Pious protestations and smug preambles but intensify distrust when men are found busy with schemes to enrich themselves through circumvention"
> McKenna: *Maple Floor Mgf. Assoc. v. United States*, 268 U.S. 563, 587

> "The Constitution of the United States does not secure to anyone the privilege of defrauding the public"
> Harlon: *Plumley v. Massachusetts*, 155 U.S. 461, 479

> "Any who wield a large amount of power should always feel the check of power. The very principle on which the nation exists is that no person shall rise above power"
> Justice Brandeis
> *Other People's Money*

> "It is most true that this court will not take jurisdiction if it should not, but it is equally true that it must take jurisdiction if should. . . We have no more right to decline the exercise of jurisdiction which is given.

> The one or the other would be treason to the Constitution.
> Marshall: *Cohens v. Virginia*, 6 Wheat (19 U.S.) 264, 404

Wherefore, petitioner prays that this application be granted.

APPENDIX

APPENDIX A

Section 2109.44 Ohio Revised Code

Fiduciaries not allowed to have dealings with the Estate; exception.

Fiduciaries shall not buy from or sell to themselves nor shall they in their individual capacities have any dealings with the Estate, except as expressly authorized by the instrument creating the trust and then only with the approval of the Probate Court in each instance; but, no Corporate Fiduciary shall be permitted to deal with the Estate, any power in the instrument creating the trust to the contrary notwithstanding. This section does not prohibit a fiduciary from making an advancement when such advancement has been expressly authorized by the instrument creating the trust or when the probate court approves.

APPENDIX B

SECTION I

Revocable Living Trust Agreement between William Kuntz, of Montgomery County, Ohio, and Winters National Bank and Trust Co. at Dayton, Ohio.

To make loans, secured or unsecured, to the Grantor's Estate with liability for the non-payment thereof.

SECTION K

. . . Or to insure the prompt payment of Taxes . . .

APPENDIX C

AFFIDAVIT OF WILLIAM E. COHEN C.P.A.

Case 231191 Docket 290 Page 591
Probate Court-Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, William E. Cohen, first being duly cautioned and sworn all according to law, depose and state as follows:

1) In the spring of 1981 while being employed by Alexander Grant and Company, CPA's, at the request of the attorney for William Kuntz III, being IRV Zipperstein Esq., 20 West Monument Street, Dayton, Ohio, I reviewed the financial date of the Estate of William Kuntz.

2) I was asked to determine whether or not provisions of I.R.S. REGULATIONS Section 6166, etc, would apply.

3) It appeared that the stock of the Peter Kuntz Company and subsidiaries exceeded the statutory requirements of the I.R.S. Code 6166, etc, and that an election to defer substantial estate taxes was available.

4) Further affiant sayeth naught.

William E. Cohen /s/

Sworn to and before me and subscribed in my presence by said William E. Cohen this 22nd day of February, 1983

J.F. Towle, *Notary* /s/

APPENDIX D

Rule 12 of the Rules of Probate

Description and valuation of stock in Decedants Estate inventory in the schedule of assets from § six . 1 to be filed in a Decendant Estate every itemized listing of corporate stock, must be proceeded by one of the following symbols . . .

. . . What is commonly known as a close corporation must be proceeded by CC and it must be valued by a duly appointed an qualified appraiser.

APPENDIX E

AFFIDAVIT OF ROBERT L. STEELE, C.P.A.

Case 231191 Docket 290 Page 591
Probate Court—Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, Robert L. Steele, having been first duly cautioned and sworn all according to Law, depose and state as follows:

1) I was duly appointed a special appraiser for the estate of William Kuntz which was confirmed by entry on August 22, 1980.

2) That the Appraisers met on the 16th of July, 1980 in the offices of the Peter Kuntz Company at 120 West Second Street, Dayton, Ohio, for a presentation by Mr. Heintz as to the values of the Common Stock of the Peter Kuntz Company.

3) The presentation was made for the Peter Kuntz Company for the year ending Oct. 31, 1979. The year prior to the date of death of the deceased.

4) That the Appraisers met again on the 22 of July, 1980 at 3481 Office Park Drive, Dayton, Ohio and there decided the value of the 7,670 shares of the common stock of the Peter Kuntz Company in the estate of William Kuntz.

5) I do not recall being further contacted by the Winters Bank with regard to the other shares in the estate.

6) Further, affiant sayeth naught.

Robert Steele /s/

Sworn to and before me and subscribed in my presence by said Robert L. Steele this the 21st day of February, 1983

S.J. Buzza, Notary /s/

APPENDIX F

AFFIDAVIT OF WILLIAM KUNTZ, III

Case 231191 Docket 300 Page
Probate Court—Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, William Kuntz, III, being first duly cautioned and sworn all according to law, depose and state as follows:

1) I am the removed Executor in the Estate of William Kuntz, and Beneficiary of the Estate and Trust Administered by Winters National Bank and Trust Company.

2) In preparation for filing objections to the accountings of the Estate herein, I obtained from Third National Bank and Trust Company the records pertaining to the transfer of $13,469,085.20 with regards to North Central Mortgage Company.

3) That the Deceased, William Kuntz, was Chairman of North Central Mortgage Company.

4) In preparation for these objections filed herein, I requested an audited financial statement from the Accountants for North Central Financial Corporation. Formerly known as North Central Mortgage Company. Which was declined at the direction of the Officers of North Central.

5) Further I requested the gross revenues and total mortgage servicing portfolio of North Central for the Fiscal Year 1980, which was declined.

6) That it is to the best of my knowledge that the gross revenues of North Central exceeded $80,000,000 in 1980 and the Mortgage Portfolio exceeded $325,000,000 in 1980.

7) To the best of my knowledge, this transaction resulted in a book value lost to the estate's interest in the Peter Kuntz Company and the shares of North Central Financial Company for-

merly known as North Central Mortgage Company, of approximately $1,077,526.80

8) Further, that Winters National Bank and Trust Company, as the lead banking institution, received for itself and for the account of others a sum in excess of $7,302,610.70. As attached hereto and marked Exhibit '1' through '6', being copies of wire-transfers from Third National Bank and Trust Company to parties this sale.

9) Further, affiant sayeth naught.

William Kuntz, III /s/

Sworn to and before me and subscribed in my presence by the said William Kuntz, III, this 22nd day of February, 1983

V.L. Georgeff, Notary /s/